Silent no More: *Hiibel* and Its Implications

*By M. Christine Klein**

Introduction

In *Hiibel v. Sixth Judicial Dist. Court of Nevada*,[1] the Supreme Court held that a person, as to whom there is otherwise no probable cause for arrest, can be sent to jail merely for declining to identify himself to a police officer. This marked a watershed moment in Fourth[2] and Fifth[3] Amendment jurisprudence, although absent an understanding of the relevant Constitutional context, it may at first blush be difficult to see why. Perplexity arises even at the highest levels: during oral argument, one Justice wondered why any "responsible citizen" would refuse to give his name.[4]

But this is not the right question. The proper Constitutional focus is not on whether a citizen who wishes to remain anonymous is cantankerous, eccentric, or unreasonable, but on whether he has a right to be as cantankerous, eccentric, or unreasonable as he wishes, particularly when there is no probable cause to believe he has committed any crime. Justice Kennedy and the four other members of the *Hiibel* majority, concluding that Dudley Hiibel "refused to identify himself only because he thought his name was none of the officer's business,"[5] decided he does not. This article takes the position that the Court got it wrong.

Hiibel's Encounter With Deputy Dove

On a spring day in 2000, Dudley Hiibel was standing by the passenger side of his pick-up truck when he was approached by Deputy Dove of the Humboldt County's Sheriff's Office.[6] A witness had claimed that a man was assaulting a woman in a truck that looked like Hiibel's. Deputy Dove asked Hiibel if he "had any identification on him," and repeated his demand for identification no fewer than eleven times. After about two-and-a-half minutes, during which Hiibel refused to provide identification while attempting to ascertain the basis for the request, Deputy Dove arrested him.

Nevada, along with many other states,[7] has what is called a "stop-and-identify" statute, a codification of the Supreme Court's opinion in *Terry v. Ohio*.[8] The Nevada statute allows a police officer to "detain any person whom [he] encounters under circumstances which reasonably indicate that the person has committed, is committing or is about to commit a crime."[9] The officer may detain the person "only to ascertain his identity and the suspicious circumstances surrounding his presence abroad."[10] The detainee "shall identify himself, but may not be compelled to answer any other inquiry."[11]

No consequences for a detainee's failure to identify himself are set forth in the "stop-and-identify" statute itself. However, Deputy Dove arrested Hiibel pursuant to another statute which makes it a misdemeanor to delay a police officer in "discharging . . . any legal duty of his office."[12] A Humboldt County justice of the peace held that Hiibel's "failure to provide identification obstructed and delayed Dove as a public officer," and fined him $250. It was this conviction that eventually led Hiibel to the Supreme Court.[13]

Basis and Scope of a "*Terry* Stop"

For over 175 years, probable cause was an "absolute" condition precedent to a constitutionally valid seizure under the Fourth Amendment.[14] But in *Terry v. Ohio*,[15] the Court held that a police officer may briefly detain a person when he has "reasonable suspicion" that criminal activity "may be afoot."[16] This was a seismic development in Constitutional law; as the Court subsequently acknowledged, "[h]ostility to seizures based on mere suspicion was a prime motivation for the adoption of the Fourth Amendment."[17] Because *Terry* is an exception to the long-standing general rule of probable cause, the Court has been "careful to maintain" its "narrow scope."[18]

The Court also authorized police officers to conduct limited pat-down frisks for weapons during some "*Terry* stops." This "narrowly drawn authority" comes into play only when the officer has "reason to believe that he is dealing with an armed and dangerous individual" who might pose an immediate threat to the physical safety of the officer.[19] Thus, there is no authority to conduct a "general exploratory search" for anything other than "guns, knives, clubs, or other hidden instruments for the assault of the police officer."[20] The framework of a "*Terry* frisk" is imminent danger.

In his concurring opinion in *Terry*, Justice White addressed the "matter of interrogation during an investigative stop" that the majority had put aside.[21] He explained:

> There is nothing in the Constitution which prevents a policeman from addressing ques-

> tions to anyone on the streets. Absent special circumstances, the person approached may not be detained or frisked but may refuse to cooperate and go on his way. However, given the proper circumstances, such as those in this case, it seems to me the person may be briefly detained against his will while pertinent questions are directed to him. *Of course, the person stopped is not obliged to answer, answers may not be compelled, and refusal to answer furnishes no basis for an arrest*, although it may alert the officer to the need for continued observation.[22]

For over thirty-five years, while avoiding a direct ruling on the matter, the Court seemed to accept Justice White's limitations on "*Terry* stop" interrogations.[23] In fact, the only other federal court to review the Nevada "stop-and-identify" statute concluded that a *Terry* detainee's right not to identify himself was "clearly established."[24] Most recently, in *Berkemer v. McCarty*,[25] the Court compared a traffic stop to a "*Terry* stop" and observed that

> ...an officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. *But the detainee is not obliged to respond.* And, unless the detainee's answers provide the officer with probable cause to arrest him, he must then be released.[26]

Various individual justices, in concurrences and dissents, have also assumed that a detainee is allowed to remain silent under the Fourth Amendment.[27] The dissent in *Hiibel* made reference to this "lengthy history" and concluded:

> The majority presents no evidence that the rule enunciated by Justice White and then by the *Berkemer* Court, which for nearly a generation has set forth a settled *Terry* stop condition, has significantly interfered with law enforcement. Nor has the majority presented any other convincing justification for change. I would not begin to erode a clear rule with special exceptions.[28]

The Right to Remain Silent

The "right to remain silent" is entrenched in American law and culture, and is a rule that is easily understood by police and citizens alike. Indeed, the Supreme Court recently observed that the possibility that a person under investigation might be unaware of his right to remain silent is "implausible."[29] When Dudley Hiibel was arrested, he was informed of his right to remain silent – *even though he had just been arrested for exercising that very right.*

The privilege against self-incrimination is based on an "unwillingness to subject those suspected of crime to the cruel trilemma of self-accusation, perjury or contempt," as well as "respect for the inviolability of the human personality and of the right of each individual 'to a private enclave where he may lead a private life.'"[30] It applies to communications that are "testimonial," as the Court has recognized nearly all verbal communications to be.[31] A privileged communication must also be "incriminating," meaning that it will itself "support a conviction" or "furnish a link in the chain of evidence needed to prosecute."[32] In *California v. Byers*, five of nine Justices concluded that stating one's name can be incriminatory.[33]

The *Hiibel* Opinion and Its Implications

The *Hiibel* majority weakened Fourth and Fifth Amendment protections by holding that a *Terry* detainee can not only be frisked for weapons that might pose an immediate physical threat, but can also be forced to disclose his name under penalty of arrest. There is a tendency to shrug one's shoulders, as a majority of the Nevada Supreme Court did, and reason that a mandatory identification requirement is "far less intrusive than conducting a pat down search of one's physical person."[34] And anyway, "we reveal our names in a variety of situations every day without much consideration."[35] As Justice Kennedy wrote, one's identity is "by definition, unique; yet it is, in another sense, a universal characteristic. Answering a request to disclose a name is likely to be . . . insignificant in the scheme of things . . . ."[36] And certainly, after September 11, 2001, "the dangers we face as a nation are unparalleled."[37] So surely, those unconcerned with the *Hiibel* ruling might think, sending to jail those citizens who refuse to identify themselves when there is reason to think they are engaged in wrongdoing will promote legitimate government interests with only a minimal intrusion on individual rights.

There are, however, flaws in this reasoning, both in general and, specifically, as a result of problematic aspects of the *Hiibel* opinion itself. The remainder of this article will address some of the more obvious concerns.

The Flawed "Terry Frisk" Analogy

It may at first seem evident that being physically handled during a weapons pat-down is more invasive than simply being asked, and forced to provide, one's name. But the apples-to-oranges comparison between a "*Terry* frisk" and compelled identification does not stand up to closer inspection.

As an initial matter, not every person subjected to a "*Terry* stop" will also, automatically, be subjected to a "*Terry* frisk." A weapons pat-down is permissible if and only if, along with suspecting the detainee generally of wrongdoing, the officer *also* has reason to believe that he is armed and presents an imminent danger to the officer's physical safety. On the other hand, under "stop-and-identify" statutes like Nevada's, every person subjected to a *Terry* stop *will* be compelled under threat of arrest to identify himself. The officer need not have any "reason to believe that he is dealing with [a] . . . dangerous individual."[38] But just as a weapons frisk must be justified by "*more* than the governmental interest in investigating a crime,"[39] so must compelled identification. A "*Terry* frisk" will instantly reveal the presence of life-threatening weapons. Compelled identification will result in the need to spend several minutes running a database search to find information about the detainee's criminal history. The exigencies that justify the first scenario simply do not arise to justify the second. Moreover, "it is the observable conduct, not the identity, of a person, upon which an officer must legally rely when investigating crimes and enforcing the law."[40]

In addition, although a weapons pat-down is a physical intrusion, it is limited in scope. A demand for identification is far more extensive in scope, for at least two reasons. First, a *"Terry* frisk" is limited to a search for weapons; an officer "may not detect a wallet and remove it for search."[41] But when identification is compelled, "the officer can now, figuratively, reach in, grab the wallet and pull out the detainee's identification."[42] Either the detainee must himself furnish identification or, if he refuses to do so, he must submit to an arrest pursuant to which the police will conduct a search and acquire his identification. That is, the "stop-and-identify" statute provides probable cause for an arrest where it would not otherwise exist. This is not an insignificant expansion of police authority during *"Terry* stops."

Second, unlike a frisk, which ends quickly and tells the officer only whether the detainee is armed, obtaining a person's identity is only the tip of the iceberg in terms of what information an officer can discover. In this age of multiple, cross-linked databases, disclosure of one's name is certain to unleash a torrent of additional information.[43] Justice Stevens made this very point in his *Hiibel* dissent, observing that a name "can provide the key to a broad array of information about the person, particularly in the hands of a police officer with access to a range of law enforcement databases. And that information, in turn, can be tremendously useful in a criminal prosecution."[44]

The "Reasonableness" of Anonymity

We provide our names to strangers all the time. No one lives his life in perfect anonymity. But we decide to whom, and under what conditions, we disclose our identities. There are consequences to anonymity, to be sure – the man who conceals his name at the airport will not be allowed to fly; the woman who conceals her name from the bank will not be permitted to open an account. But we decide which consequences are acceptable to us and which are not. In none of these voluntary, day-to-day transactions do we face arrest and a criminal record if we choose to stay anonymous.

The Nevada Supreme Court began its opinion by recognizing:

> Fundamental to a democratic society is the ability to wander freely and anonymously, if we so choose, without being compelled to divulge information to the government about who we are or what we are doing. This "right to be let alone" – to simply live in privacy – is a right protected by the Fourth Amendment and undoubtedly sacred to us all.[45]

But the court quickly jettisoned that observation by adding that "[r]easonable people do not expect their identities – their names – to be withheld from officers."[46] Here is the problem: the Fourth Amendment "does not impose obligations on the citizen but instead provides rights against the government."[47] Reasonableness is a burden imposed upon the State, not its citizens.[48] This is just as true for other Constitutional protections; for example, the content of a man's speech may prove him an unreasonable fool, but the State is precluded from infringing upon it. Similarly, a citizen, who has done nothing giving rise to probable cause for arrest, has every right to maintain his anonymity, whether or not his neighbor thinks it is unreasonable for him to do so.

In addition, this reasoning does not apply only to

"*Terry* stop" situations. If the only question is whether a "reasonable" or "responsible" citizen would provide his name, then any citizen — not only one as to whom there is reason to suspect wrongdoing — can be jailed for retaining his anonymity.

Speaking is Now the Default Rule

The *Hiibel* opinion will, as a practical matter, affect every citizen, not just those who are suspected of wrongdoing. This is why:

The *Hiibel* majority expanded upon the *Terry* Court's break with nearly two centuries of Fourth Amendment jurisprudence by authorizing a State to arrest any citizen who does not provide his name to an officer whose "reasonable suspicion" has been aroused. At least this appears at first glance to be the Court's ruling, and it would at least have the advantage of being bright-line and easy to understand. But matters are a bit more complicated than that, because "an officer may not arrest a suspect for failure to identify himself if the request for identification is not reasonably related to the circumstances justifying the stop."[49] Muddying the waters further, the Court suggested two entirely different standards for determining whether a demand for identification is "reasonably related to the circumstances justifying the stop." The first standard, based on dicta from *Hayes v. Florida*,[50] is whether there is a "reasonable basis for believing" that disclosure of the name "will establish or negate the suspect's connection with [the] crime."[51] This standard seems to favor the detainee. (It also raises obvious Fifth Amendment concerns.) The second standard is whether the officer's request is a "commonsense inquiry."[52] Since it is difficult to imagine any circumstance in which it would *not* be common sense for an officer to ask a detainee his name, this standard strongly favors the State.

The *Hiibel* majority adds to the confusion in its Fifth Amendment analysis. First, the majority left for another day the question whether stating one's name is "testimonial," limiting its holding to its determination that in Hiibel's case, his name was not "incriminating."[53] Additionally, the majority suggested that even in a case where there is a substantial allegation that furnishing one's identity would prove incriminating, the Fifth Amendment's privilege still *might* not apply.[54] The majority also reasoned that a name is incriminating only in "unusual circumstances"[55] – which begs the question what interest the State has in it under the Fourth Amendment.

Before *Hiibel*, both police and citizens could adhere to a very simple, easy-to-understand rule: police could ask, but citizens did not have to answer. Now, although both citizens and police must conduct a complicated calculus, it is the citizen who bears the greater burden. Anyone approached by a police officer must decide whether remaining silent and preserving his anonymity – as under all but the most limited circumstances he is still permitted to do – is a constitutionally protected right or a crime.

He must first decide if he is the subject of a legitimate "*Terry* stop": if so, silence is a crime, if not, it is a right. He must then decide whether the officer's request for identification is "reasonably related" to his suspicion: if so, silence is a crime, if not, it is a right. But until the Court speaks again, a detainee must guess whether to use the strict *Hayes* "establish or negate" standard, or the more lenient "commonsense inquiry" standard. He must further decide if revealing his identity would lead to a substantial risk of self-incrimination, and if so, then silence *might* be a crime, but on the other hand it might be a right. Again, there is no way to be sure until the Court speaks again.

A citizen who chooses not to identify himself – even if he is correct that he need not do so — must hope that the police officer has sifted through the various factors and come up with the same answer. If the officer sees things differently, the citizen can vindicate himself only by submitting to an arrest record and incurring the expense of defending himself in court. Most *Terry* detainees are never arrested, and most citizens will not want to run the substantial risk that silence now presents. The *de facto* result is that the police can approach anyone, for any reason or no reason at all, and breach the cloak of anonymity.

As the Court has recognized in the past, "the protections intended by the Framers could all too easily disappear in the consideration and balancing of the multifarious circumstances presented by different cases," and so a "single, familiar standard is essential to guide police officers."[56] In *Hiibel*, the Court has strayed far from this sensible observation.

Information Beyond a Name

At oral argument in *Hiibel*, counsel for the United States, arguing as *amicus curiae* on behalf of Nevada, was asked: "[W]hy do you stop at the name?" and responded: "I'm not sure that there's a limitation related to answers to questions."[57] The *Hiibel* dissent recognized this concern:

> Can a State, in addition to requiring a stopped individual to answer "What's your name?" also require an answer to "What's your license number?" or "Where do you live?" Can a police officer, who must know how to make a *Terry* stop, keep track of the constitutional answers?[58]

These are not idle concerns. The "stop-and-identify" statutes of many others states authorize police to demand information including a detainee's address, destination, and an explanation of his conduct. All these inquiries might be "common sense," the information gleaned might "establish or negate" the detainee's connection to a crime, and answers may or may not be incriminating. It could even be argued that the more information an officer has, the better able he is to assess his safety. The reasoning of the *Hiibel* majority provides no clear understanding of limitations to interrogations during "*Terry* stops," now that silence is no longer the rule.

Conclusion

We do live in difficult times, and the threat of terrorism is a real one. Civil liberties can impede effective police work. Police could be even more effective if they were allowed to approach whomever they wished and find out whatever they wanted to know. But the Constitution is not properly viewed as a mere impediment to arrest. As the Court recognized in another stop-and-identify case:

> Appellants stress the need for strengthened law enforcement tools to combat the epidemic of crime that plagues our Nation. The concern of our citizens with curbing criminal activity is certainly a matter requiring the attention of all branches of government. As weighty as this concern is, however, *it cannot justify legislation that would otherwise fail to meet constitutional standards* . . . .[59]

As written, the *Hiibel* opinion has abandoned clarity and replaced it with a complicated formula that no police officer can realistically be expected to apply consistently during a *"Terry* stop." Nor is it possible for citizens to understand the distinctions between protected silence and criminalized silence. *Hiibel* has opened the floodgates to piecemeal litigation as to the constitutionality of arresting citizens for not disclosing a wide variety of information beyond mere identity. One can only hope that, in the line of cases that will inevitably follow *Hiibel*, the Court declines to further erode Constitutional first principles.

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Footnotes

[1] 124 S. Ct. 2451 (2004).

[2] The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause . . . ." U.S. Const. amend. IV. The Fourth Amendment is applicable to the states through the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643 (1961).

[3] The Fifth Amendment provides in relevant part: "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ." U.S. Const. amend. V. The Fifth Amendment privilege against self-incrimination is applicable to the states through the Fourteenth Amendment. Malloy v. Hogan, 378 U.S. 1 (1964).

[4] Hiibel v. Sixth Judicial Dist. Court of Nevada, Transcript of Oral Argument, March 22, 2004, 2004 WL 720099 at *16.

[5] 124 S. Ct. at 2461.

[6] The videotape of Hiibel's arrest can be viewed at http://papersplease.org/hiibel/video.html.

[7] For an overview of "stop-and-identify" statutes in various states and localities, *see* M. Christine Klein & Timothy Lynch, *The Tale of the Anonymous Cowboy: And What He Has to Do with Your State's* Terry *Stop Legislation*, ALEC Policy Forum: A Journal for State and National Policymakers 34 (Spring 2004).

[8] State v. Lisenbee, 13 P.3d 947, 950 (Nev. 2000) (referring to Terry v. Ohio, 392 U.S. 1 (1968)). *Terry* is discussed at greater length *infra*, Section III.

[9] Nev. Rev. Stat. § 171.123(1) (2003).

[10] Nev. Rev. Stat. § 171.123(3) (2003).

[11] *Id.*

[12] Nev. Rev. Stat. § 199.280 (2003).

[13] Deputy Dove never directly asked Hiibel his name. Rather, as the Court recognized, he expected Hiibel to "produce a driver's license or some other form of *written* identification." *Hiibel*, 124 S. Ct. at 2455 (emphasis added). The Court determined that the "stop-and-identify" statute does *not* require documentary proof of identification, but rather allows a detainee to choose how he wishes to identify himself. *Id.* at 2457. But the Court upheld Hiibel's conviction anyway. This factual sleight-of-hand led Hiibel to file a petition for rehearing on July 26, 2004, which was denied on August 23, 2004.

[14] Dunaway v. New York, 442 U.S. 200, 208 (1979).

[15] 392 U.S. 1 (1968).

[16] *Id.* at 30. The Court understood that when a police officer "accosts an individual and restrains his freedom to walk away, he has 'seized' that person." *Id.* at 16.

[17] *Dunaway*, 442 U.S. at 213.

[18] Ybarra v. Illinois, 444 U.S. 85, 93 (1979).

[19] *Terry*, 392 U.S. at 27. The Court has subsequently reiterated that the police officer must have a "reasonable belief" that the detainee is "armed and *presently* dangerous." *Ybarra*, 444 U.S. at 92-93 (emphasis added).

[20] *Id.* at 29-30.

[21] *Id.* at 34 (White, J., concurring).

[22] *Id.* (White, J., concurring) (emphasis added).

[23] *See, e.g.,* Davis v. Mississippi, 394 U.S. 721, 726 n. 6 (1969) (referring to the "settled principle that while the police have the right to request citizens to answer voluntarily questions concerning unsolved crimes they have no right to compel them to respond"); *Dunaway*, 442 U.S. at 210 & n.12 (emphasizing the "narrow scope" of *Terry* and quoting favorably Justice White's concurrence that a detainee cannot be compelled to answer questions).

[24] Carey v. Nevada Gaming Control Bd., 279 F.3d 873, 881 (9th Cir. 2002) (finding the Nevada statute unconstitutional). However, prior to *Hiibel*, an inter-circuit split existed as to the constitutionality of "stop-and-identify" statutes generally. *See, e.g.,* Oliver v. Woods, 209 F.3d 1179 (10th Cir. 2000) (holding that a similar Utah statute was constitutionally sound).

[25] 468 U.S. 420 (1984).

[26] *Id.* at 439-40 (emphasis added) (footnotes omitted).

[27] *See, e.g.,* Michigan v. DeFillippo, 443 U.S. 31, 44, 46 (1979) (Brennan, J., joined by Marshall and Stevens, JJ., dissenting) (elaborating on, but not contradicting, an assumption made by the majority, and reasoning, based on "*Terry* and its progeny," both that "the privacy interest in remaining silent cannot be overcome at the whim of any suspicious police officer" and that "police acting on probable cause may not search, compel answers, or search those who refuse to answer their questions"); Kolender v. Lawson, 461 U.S. 352, 366 (1983) (Brennan, J., concurring) (reasoning that police officers "may ask their questions in a way calculated to obtain an answer. But they may not *compel* an answer . . . .) (emphasis in original).

[28] *Hiibel*, 124 S. Ct. at 2466 (Breyer, J., joined by Souter and Ginsburg, JJ., dissenting).

[29] Brogan v. United States, 522 U.S. 398, 405 (1998).

[30] Doe v. United States, 487 U.S. 201, 212 (1988) (*quoting* Murphy v. Waterfront Comm'n of New York Harbor, 378 U.S. 52 (1964)).

[31] *Id.* at 213-14 (recognizing that the "vast majority of verbal statements" are testimonial and to that extent covered by the Fifth Amendment privilege). An easy way to decide whether a communication is testimonial is to ask whether the detainee could tell a lie in response. George Fisher, Evidence 800 (2002).

[32] Hoffman v. United States, 341 U.S. 479, 486 (1951).

[33] 402 U.S. 424, 448 (1971) (Harlan, J., concurring); *id.* at 460 (Black, J., joined by Douglas and Brennan, JJ., dissenting); *id.* at 464 (Brennan, J., joined by Douglas and Marshall, JJ., dissenting). The plurality opinion, which is not the opinion of the Court, *see* Marks v. United States, 430 U.S. 188, 193 (1977), concluded that "[d]isclosure of a name and address is an essentially neutral act" in the context of a non-criminal regulatory scheme. *Id.* at 432 (plurality opinion of Burger, C.J., joined by Stewart, White and Blackmun, JJ.).

[34] Hiibel v. Sixth Judicial Dist. Court, 59 P.3d 1201, 1206 (Nev. 2002).

[35] *Id.*

[36] *Hiibel*, 124 S. Ct. at 2461.

[37] *Hiibel*, 59 P.3d at 1206.

[38] *Terry*, 392 U.S. at 27.

[39] *Id.* at 23.

[40] *Hiibel*, 59 P.3d at 1209 (Agosti, J., dissenting).

[41] *Id.*

[42] *Id.*

[43] For a discussion of the constitutional implications of readily accessible and comprehensive databases, *see* Brief of Amici Curiae Electronic Privacy Information Center (EPIC) and Legal Scholars and Technical Experts, Hiibel v. Sixth Judicial Dist. Court of Nevada, 124 S. Ct. 2451 (2004) (No. 03-5554), *available at* 2004 WL 22970604 *and* http://www.abditum.com/hiibel/pdf/epic_amicus.pdf.

[44] *Hiibel*, 124 S. Ct. at 2464 (Stevens, J., dissenting). Technology has advanced at quantum speed in recent years, but even thirty years ago, Justice Harlan was already able to recognize the "dynamic growth of techniques for gathering and using information culled from individuals by force of criminal sanctions." *Byers*, 402 U.S. at 453-54 (Harlan, J., concurring) *See also* Lawson v. Kolender, 658 F.2d 1362, 1368 (9th Cir. 1981), *aff'd*, Kolender v. Lawson, 461 U.S. 352 (1983) (recognizing, in compelled identification case, that the identification of a "suspicious" individual "grants the police unfettered discretion to initiate or continue investigation of the person long after the detention has ended.").

[45] *Hiibel*, 59 P.3d at 1204 (footnotes omitted).

[46] *Id.* at 1206.

[47] *Hiibel*, 124 S. Ct. at 2459.

[48] *See, e.g., Terry*, 392 U.S. at 20 (explaining that the central inquiry, when evaluating the constitutionality of a "*Terry* stop," is "whether the officer's action was justified as its inception, and whether it was *reasonably* related in scope to the circumstances which justified the interference in the first place.") (emphasis added).

[49] *Hiibel*, 124 S. Ct. at 2459.

[50] 470 U.S. 811 (1985).

[51] *Hiibel*, 124 S. Ct. at 2460.

[52] *Id.*

[53] *Id.*

[54] *Id.* at 2461.

[55] *Id.*

[56] *Dunaway*, 442 U.S. at 213-14.

[57] Hiibel v. Sixth Judicial Dist. Court of Nevada, Transcript of Oral Argument, March 22, 2004, Argument of Sri Srinivasan, Esq., Assistant to the Solicitor General, U.S. Department of Justice, 2004 WL 720099 at *55.

[58] *Hiibel*, 124 S. Ct. at 2465-66 (Breyer, J., dissenting).

[59] *Kolender*, 461 U.S. at 361. *See also id.* at 365 (Brennan, J., concurring) ("We have never claimed that expansion of the power of police officers to act on reasonable suspicion alone, or even less, would further no law enforcement interests. [citation omitted] But the balance struck by the Fourth Amendment between the public interest in effective law enforcement and the equally public interest in safeguarding individual freedom and privacy from arbitrary governmental interference forbids such expansion.").